

BEFORE THE OFFICE OF TAX APPEALS

STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
)
B. POOL,) OTA NO. 21129326
)
)
) APPELLANT.
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TRANSCRIPT OF ELECTRONIC PROCEEDINGS

State of California

Thursday, January 26, 2023

Reported by:
ERNALYN M. ALONZO
HEARING REPORTER

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STATE OF CALIFORNIA

IN THE MATTER OF THE APPEAL OF,)
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B. POOL,) OTA NO. 21129326
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Transcript of Electronic Proceedings,
taken in the State of California, commencing
at 9:31 a.m. and concluding at 10:29 a.m.
on Thursday, January 26, 2023, reported by
Ernalyn M. Alonzo, Hearing Reporter, in and
for the State of California.

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APPEARANCES:

Panel Lead: ALJ ANDREW WONG

Panel Members: ALJ JOSHUA ALDRICH
ALJ MIKE LE

For the Appellant: CARLOS MEZA

For the Respondent: STATE OF CALIFORNIA
DEPARTMENT OF TAX AND
FEE ADMINISTRATION

COURTNEY DANIELS
CHAD BACCHUS
JASON PARKER

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I N D E X

E X H I B I T S

(Appellant's Exhibits 1-5 were received at page 6.)

(Department's Exhibits A-B were received at page 7.)

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WITNESSES:

	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
B. Pool	10	22		

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California; Thursday, January 26, 2023

9:31 a.m.

JUDGE WONG: Let's go on the record.

We're opening the record in the Appeal of Pool before the Office of Tax Appeals. This is OTA Case Number 21129326. Today is Thursday, January 26th, 2023. The time is 9:31 a.m. We're holding this hearing by video conference.

I am lead Administrative Law Judge Andrew Wong, and with me today are Judges Josh Aldrich and Mike Le. We are the Panel hearing and deciding this case. The individuals representing the Appellant taxpayer, please identify yourselves.

MR. MEZA: Carlos Meza for Appellant, Bret Pool, Your Honor.

MR. POOL: Bret Pool.

JUDGE WONG: Thank you.

This is Judge Wong. Individuals representing the Respondent tax agency California Department of Tax and Fee Administration, CDTFA, please identify yourselves.

MS. DANIELS: Courtney Daniels for the Department.

MR. BACCHUS: Chad Bacchus also with the Department.

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MR. PARKER: And Jason Parker with CDTFA.

JUDGE WONG: Thank you.

This is Judge Wong. We are considering one issue today, whether Appellant's storage, use, or other consumption of a vessel in California is subject to tax.

Mr. Meza, is that a correct statement of the issue?

MR. MEZA: That's correct, Your Honor.

JUDGE WONG: Ms. Daniels, is that a correct statement of the issue?

MS. DANIELS: Yes, it is. Thank you.

JUDGE WONG: Thank you.

This is Judge Wong. Appellant has identified and submitted proposed Exhibits 1 through 5 as evidence and has no other exhibits to offer as evidence. CDTFA has no objections to them.

Is that correct, Ms. Daniels?

MS. DANIELS: That's correct.

JUDGE WONG: Okay. Thank you.

Therefore, Appellant's Exhibits 1 through 5 will be admitted into the record as evidence.

(Appellant's Exhibits 1-5 were received in evidence by the Administrative Law Judge.)

CDTFA has identified and submitted proposed Exhibits A through B as evidence and has no other

1 documents to offer in as evidence.

2 Mr. Meza, you have no objections to those
3 proposed exhibits; is that correct?

4 MR. MEZA: That's correct. No objections.

5 JUDGE WONG: This is Judge Wong. Thank you.

6 CDTFA's Exhibits A and B will be admitted into
7 the record as evidence.

8 (Department's Exhibits A-B were received in
9 evidence by the Administrative Law Judge.)

10 Mr. Meza has one witness, Mr. Bret Pool, and
11 CDTFA has no witnesses. All right. I will now swear in
12 the record [sic].

13 And then after that, Mr. Meza and Mr. Pool, you
14 can proceed with your presentation.

15 Mr. Pool, can you please raise your right hand.

16

17 B. POOL,

18 produced as a witness, and having been first duly sworn by
19 the Administrative Law Judge, was examined and testified
20 as follows:

21

22 JUDGE WONG: Thank you.

23 All right. Mr. Meza, you may proceed.

24 MR. MEZA: Yes. Good morning, Your Honor.

25 ///

1 sail in October near the fall when weather conditions can
2 be a little risky.

3 He tried to get it out before the winter and
4 unfortunately to his bad luck, he ran into a severe storm
5 that forced him and his crew to seek refuge because the
6 boat had been extensively damaged out at sea. After that,
7 it was just a series of onslaught of delays between
8 repairs and then him not being able to hire a crew
9 immediately, trying to find people who would sail with
10 him. And bouncing between that and between work, it was a
11 bit of a hectic voyage to complete.

12 So it was a constant fight for him to get that
13 boat down there, and he had to use his wittiness and his
14 expertise and knowledge in sailing to get it down as safe
15 as possible. But yes, there was some damage that was very
16 extensive that he had to repair along the way being an
17 older boat. And had it not been for that storm and that
18 damage, he would have been able to one-shot the trip all
19 the way down to Baja without stopping with his crew.
20 Without the crew, he could not sail alone for long periods
21 of time. So that forced him to constantly having to stop.

22 I have nothing more to say at this moment, Your
23 Honor.

24 JUDGE WONG: This is Judge Wong. Thank you.
25 Would you like to commence with your witness examination?

1 MR. MEZA: Yes.

2 JUDGE WONG: Please proceed.

3

4 DIRECT EXAMINATION

5 BY MR. MEZA:

6 Q Mr. Pool, good morning.

7 A Good morning.

8 Q Good morning, Bret. I'd just like to start off
9 by asking a couple of questions. How long would you say
10 you've been sailing for?

11 A I've been sailing since 1984.

12 Q 1984. How did you start your sailing practice,
13 or what is your history, if you would like to elaborate a
14 little bit more on that?

15 A Oh, in 1984 I started wind surfing. In 1986 I
16 purchased an 18-foot catamaran, which I sailed for years
17 off of Newport Beach and Dana Point. In 1997 I met a
18 friend who had a 42-foot sloop in Long Beach. And I
19 sailed with him extensively through the Channel Islands
20 and primarily Catalina Island. I sailed with Judd to
21 Cabos San Lucas in the fall of 2000. And five years later
22 I sailed from Long Beach to Hawaii with Judd.

23 In January of 2013, I purchased a very heavily
24 used Newport -- it's called a Newport 41. It's a sloop.
25 I bought it primarily because there was a mooring that

1 finally became available in Newport Beach, so I bought the
2 two together. And my intention with that boat -- because
3 that was a very light sort of racing boat -- was just to
4 do some amateur racing with that. So I had that boat.

5 And then in January '14, I purchased the Dublin
6 Dragon in Portland and -- with the intent that that would
7 eventually be the boat that I would use to do some open
8 ocean sailing because a Dublin Dragon is a 37-foot Tayana,
9 which is a world-renowned open blue-water heavy, heavy
10 cruiser boat primarily made for circumventing the planet.
11 So that's my history. So it's extensive in the sailing
12 world, and that doesn't include, you know, my time as a
13 U.S. Coast Guard captain.

14 Q Okay. And would you say that mooring docks and
15 slips are limited and scarce at times?

16 A Repeat that, please.

17 Q Mr. Pool, would you say that mooring sloops, for
18 mooring your ships, are they limited in quantity or scarce
19 at times? Hard to come by sometimes?

20 A Oh, like this Tayana?

21 Q Well, when you -- locations to moor it, to dock
22 it?

23 A Oh, yes. Yeah. They're -- in fact, if it hadn't
24 been for some actions by the Harbor Commission where they
25 had tripled the fees for moorings, I don't think there had

1 been a mooring sold in Newport Beach for 20 years. There
2 was a lot of back and forth. They had tripled or
3 quadrupled the cost for moorings and the fees. So this
4 mooring with the Newport 41 on it, I had a chance to buy
5 that. And because I knew that shortly after that they
6 would -- Newport Beach would have to bring its mooring
7 rates back in line with the rest of the state.

8 So it was a very narrow window of opportunity
9 that I had. So there's, you know, the mooring eventually
10 became quite expensive, but there were no other moorings
11 available for purchase because I can only buy, I think,
12 two at the time, and there weren't any others. And
13 without a mooring, it would be impossible for me to moor a
14 boat in Newport Beach just because of the cost. It would
15 be somewhere between 5 and \$6,000 a month possibly for a
16 45-foot mooring for the Dragon. So I had no other options
17 thus far. So there was never any intent to keep it in
18 Newport, just move on past.

19 Q Right. Okay. And when you purchased the Dublin
20 Dragon, what was your original sailing intent for that
21 boat?

22 A Well, the original sailing intent was to, you
23 know, keep it in Portland for as long as necessary to
24 complete the repairs and the upgrades to get it ready
25 again for the open ocean. And then I -- the intent was to

1 sail it down to Cabo or San Jose del Cabo where I was
2 going to keep it with a lot of other Americas down there
3 with their boats. It's a safe harbor. It's obviously a
4 great place for vacation, but that was the intent to bring
5 the Dragon down there.

6 Q Okay. And how far off were you delayed in your
7 original trip plans?

8 A Well, you know, the idea was to leave in about
9 July, but I ended up having to replace an integral part of
10 the boat which are called the chain plates. They hold the
11 rigging on. They are essential to safe operation. That
12 set me back a couple of months because they had to be
13 manufactured, and I had to replace the beds on the boat.
14 It's not an a-typical repair for a boat of that age.

15 I just -- when the boat was surveyed, the
16 surveyor did not catch that. So that put me deep into the
17 fall. And all the sailing guides from the sailing the
18 Pacific Northwest is like, as long as you're heading south
19 on October 1st, you're okay but don't do it any later. So
20 I managed to get repairs done, and I thought, well, I can
21 make the October 1st departure date. And that's how that
22 came about.

23 Q Okay. Now, the unfortunate incident that caused
24 damage to your boat was Agua Dio Bay [sic]; correct?

25 A Yeah. It was northwest of Bodega Bay, probably

1 around 40 to 50 nautical miles. That was on October 7th,
2 late afternoon, and it's one of the things they warn you
3 about. And in that part of the shore up there there's no
4 really safe harbor. So -- but what happened is a
5 gale-force -- a gale came in, which is one level below a
6 hurricane. And 4 -- you know, 4 out of 7 hours of this
7 gale, it was, you know -- pardon the language. It was
8 closer to hell at times.

9 I had the mast in the water several times. The
10 boat was being rolled from side to side to 180 degrees.
11 And I've got myself, my dog, and it was a dangerous
12 situation. It's not that the boat isn't made to do that.
13 But I mean, at one point I was thrown through the galley,
14 and I actually broke the galley table off. I've got my
15 dog in the galley of the boat rolling back and forth.
16 Stuff is coming out of the -- I mean, the boat is
17 literally heaving through 180 degrees with the mast
18 hitting the water.

19 I've got 15 to 20-foot water. And, you know, by
20 the time I've done this for four hours, I'm -- I've got
21 all the repairs that were done on the boat. I've got to
22 seek safe harbor because I didn't know. All I know is
23 that I'm in a gale. I'm trying to follow the weather
24 through the U.S. Coast Guard, and I don't know how long
25 it's going to last. So I made plans to enter Bodega

1 Harbor just to seek safe harbor because I also didn't know
2 if the gale was going to increase in force or go down.

3 It just -- it was a very dangerous situation, and
4 it had to be dealt with. So with no intention whatsoever
5 of entering, you know, any harbor or port in California, I
6 had to do so just for the safety -- for my safety and my
7 crew's safety. And -- and at this point, you know, things
8 had begun -- started to fall apart in the boat.
9 Primarily, you know, sails were beginning to tear. The
10 jib sheets which control the force sail, which is the one
11 you would use in a back wind situation, one of those began
12 to tear.

13 And, you know, I may have been able to repair it
14 out at sea, but I've got 15-foot waters with the boat
15 rolling. I -- it would have been just a very dangerous
16 situation. And my crew member, David, didn't have the
17 sailing experience to be able to handle that boat alone if
18 I was to go overboard. So, you know, just safety dictated
19 that I had to seek shelter.

20 Q Okay. Mr. Pool, we refer to Exhibit 3. There is
21 a log, a captains log. Is this something you prepared and
22 you normally routinely keep? And what kind of information
23 do you input into that log?

24 A Normally, what is -- you know, the day, the time,
25 your position. The weather is often included. On a

1 longer, you know, sail like, you know, we had been out at
2 sea for several days. You might not, you know, enter
3 every single day, but you would enter details if anything
4 significant happened.

5 One of the things that was obvious on October 7th
6 is, even in the morning when I got up, there's something
7 that most sailors with experience on the West Coast are
8 going to understand. If you get up and your decks are
9 dry, there's something going on. And I knew by noon
10 something was going to happen. So I had already began to
11 prepare for potential bad weather, and that's when the
12 U.S. Coast Guard began to announce, you know, the
13 possibility of a gale.

14 But -- so I had already prepared the boat, but at
15 this point I'm, you know, 60, 70 miles northwest of
16 Bodega. There's absolutely no other harbors to go into.
17 So to be prudent, what you would do is head offshore
18 further. We went for probably 12 miles off to 20 miles
19 off just to give some safe room between the rocks and the
20 shore. And the gale did happen, and so we fought that for
21 several hours.

22 And the thing was to sit out at sea and ride it
23 out or try to seek safe harbor but, you know, those were
24 my two decisions. So what I did though for -- primarily
25 for my safety and for David, I decided to seek shelter as

1 opposed to stay off shore.

2 Q Okay. Mr. Pool, when you said you left with a
3 crew, how many?

4 A One. David Erickson and a dog.

5 Q A dog. Okay. After the Bodega Bay incident, did
6 you sail with a crew, or were you sailing solo?

7 A At that point when I took it, after I had the
8 boat in Bodega Bay and did the repairs, I sailed it solo
9 to Monterey, which was about 28 hours. So I'm up for, you
10 know -- I'm too close near shore to sleep. So at 24 hours
11 I'm just like, I've got to seek shelter. So I called
12 Monterey, and I got a transient slip in Monterey, and that
13 forced the -- well, that stop.

14 Do you want me to continue after that on -- or --

15 Q Yes, please.

16 A Oh, from Monterey -- so the boat -- I had to
17 return back to work. I managed to get a couple of other
18 friends to do the next leg. We went, but they didn't have
19 more than just the long weekends. So with a couple of
20 other crew members, I sailed from Monterey to Morro --
21 Morro Bay and kept the boat there. I think once in Morro
22 Bay, we returned to Orange County.

23 And just because of the timing and some weather
24 issues, I wasn't able to return for like -- my dates might
25 be off. I wasn't able to return to Morro Bay for I think

1 two weeks. And then I sailed it with a couple of crew
2 members around -- around to Santa Barbara and again,
3 because now we're deep into winter. The days are really
4 short. It's very cold.

5 At this point I had given up any hope of sailing
6 directly to Mexico just because now I'm into the winter.
7 So my next stop was -- let's see. Yeah, right around the
8 corner. I can't think of the name right now. Gosh, the
9 University of -- anyway, right -- sorry about that. Let
10 me -- it wasn't Ventura. It was a harbor prior to
11 Ventura. Anyway, so from there, you know, the boat sat
12 for about a week. I went up with -- I sailed there solo.
13 I think it was early December. From there to San Pedro,
14 that was solo. That was another 28 hours on the water.

15 And at this point it's almost Christmastime, and
16 the boat sat in San Pedro for a week or two until I was
17 able to get a friend of mine, Eric Mai, where we went from
18 San Pedro to Ensenada in one shot. And that was right
19 around Christmas or New Year's. I forget the exact dates.

20 Q Okay. Mr. Pool, would you say one shot solo
21 sailing is a dangerous task that is particularly almost
22 hard to do during the winter?

23 A Well, yeah. You know, there's various opinions
24 on that. Some people will say never do it. A lot of
25 people do it all the time, but they do it out in open

1 water, not anywhere near shore because -- or anywhere near
2 shipping lanes. That would happen, like, going to the
3 South Pacific for instance.

4 Around the coast of California with the amount of
5 fishing and the amount of freighters, it's not -- it's
6 nothing you can do safely, and you need to be a lot
7 further offshore than 20 miles because you can cover 20
8 miles fairly quickly. And if you were to fall asleep, you
9 could find yourself on the rocks, which is -- the world is
10 full of those stories.

11 So none of the sailing I did on the way down
12 would have been prudent to sleep at all. So on the
13 sections that I did solo, I had to stay awake. And at
14 some point that becomes not safe in itself just because of
15 exhaustion.

16 Q Okay. Absent the Bodega Bay incident, would you
17 have been able to sail straight down to Mexico?

18 A Oh, absolutely. Yeah. That was -- we were -- we
19 had, you know, 140 gallons of water. We had almost 100
20 gallons of diesel. We were completely ready to go. I
21 mean the boat was blue water capable. That was -- had it
22 not been for Bodega, there would have been no stop in
23 California whatsoever.

24 My crew at that time, because it was right after
25 October, they were prepared for, you know, seven days at a

1 minimum, up to 10 days to get to Ensenada. Which is
2 typical of a boat that size to go from Portland to
3 Ensenada.

4 Q Okay. And you mentioned Ensenada. So the
5 original plan was to go to Los Cabos, but then you shipped
6 towards Ensenada at what point in time?

7 A Well, that was -- Ensenada probably would have
8 been a stop along the way any way just because that's
9 about a 900-mile trip. And then from -- well, maybe about
10 1,000. And from Ensenada to Cabo is about 800 miles.
11 That was -- I wasn't setup for that. So Ensenada was
12 always going to be a stop to refit the boat and to, you
13 know, make any repairs that are necessary, but to outfit,
14 you know, add food, add water, add diesel for the trip to
15 Cabo.

16 Q Okay. Well thank you, Mr. Pool.

17 A Okay.

18 MR. MEZA: I'd like to proceed just by stating
19 that Mr. Pool, as you can tell from his testimony, is that
20 had it not been for that incident, he would have been able
21 to sail nonstop to Mexico with his crew. Without the
22 crew, he'd be sailing solo in dangerous conditions. That
23 wouldn't be prudent and would just be, I would say,
24 inconsiderate and reckless to other sailors and other
25 boats out at sea, especially, if you're going down

1 commercial lanes and -- I mean, for the safety of the
2 general public welfare. He did the prudent thing by
3 stopping. If it had not been for that storm, he should
4 have been able to go nonstop.

5 As you can see from the exhibits that I provided
6 earlier, there's a log detailing his entire journey,
7 including repairs. There's receipts as well showing the
8 extensive amount of repairs that he needed to do. There's
9 even a weather report showing the storm and when it hit.
10 Now hearing that story is kind of chilling. It's pretty
11 chilling, you know. Because, I mean, I love my dogs. And
12 me out at sea with another person too, and you're playing
13 with more than one person's life, not just your life at
14 that point in time.

15 So Mr. Pool did the prudent thing in pulling into
16 Bodega Bay and having his ship repaired instead of risking
17 the lives of his crew. It would be unconscionable and
18 unjust for Mr. Pool to be charged usage tax by the State
19 of California for an incident that arose from necessity
20 from an emergency. It was never his intention to moor the
21 boat in California. It was impossible for him to do so.
22 He already had a ship in California. And Mr. Pool made it
23 clear that availability for these slips to moor your boats
24 is something that's rare. Well, I wouldn't say rare but
25 scarce.

1 stop off in Ensenada before heading down to Cabo. So I
2 just wanted to clarify that -- well, first of all, I'm
3 assuming we're speaking about Ensenada, California, or are
4 we speaking about some place in Mexico?

5 A In Mexico. Ensenada, Mexico.

6 Q Okay. That was my question. Thank you.

7 JUDGE WONG: Thank you, Ms. Daniels.

8 All right. I will now turn to my panel to see if
9 they have questions for the witness or Mr. Meza, starting
10 with Judge Le.

11 JUDGE LE: This is Judge Le. I have a few
12 questions. When were the entries in the captain's log
13 prepared?

14 MR. POOL: What's that?

15 JUDGE LE: When was the entries in the captain's
16 log prepared?

17 MR. POOL: Oh, they are taken every day as you
18 go, and they are written down on whatever -- typically,
19 you have a log in the boat. In this case, I was keeping a
20 lot of the log on an iPad.

21 JUDGE LE: Okay. Thank you. And sorry if I'm
22 having trouble a little bit reading your handwriting here.
23 Does the captain's log discuss the storm that you
24 mentioned.

25 MR. POOL: It should have, yeah. It's somewhere

1 in that log. It's definitely. It was noted because I
2 took screen captures of NOAA's weather report and of, you
3 know, the overall graphic of that storm, including the
4 date and time. It should be in one of the exhibits.

5 JUDGE LE: Okay. If there's a particular point
6 or line you can point to, that would be helpful for me.

7 MR. POOL: I don't.

8 MR. MEZA: I can answer that, Your Honor. If you
9 go to -- it would be October 8th. That's when the
10 incident -- around the time the incident started. It
11 would be page 1, 2, 3, 4, 5 -- page 5 of the log in the
12 exhibit -- of Exhibit 3.

13 JUDGE LE: Okay. Thank you. And I see the
14 October 8 date. Which particular line are you referring
15 to?

16 MR. MEZA: It would start -- if you go down to
17 the middle of the left-hand side, it starts to describe
18 some of the damage, cable broken. I believe it was -- we
19 were 540 degrees instantly entering Bodega Bay. We're
20 disappearing behind 20-foot waves. These descriptions,
21 basically he's jotting down the description of -- writing
22 in shorthand what's going on.

23 JUDGE LE: Okay. Thank you. No further
24 questions from me.

25 JUDGE WONG: This is Judge Wong. Judge Aldrich,

1 do you have any questions for the witness or Mr. Meza?

2 JUDGE ALDRICH: Hi. This is Judge Aldrich. I
3 have a couple of questions. So you purchased the boat,
4 and then when was it first registered?

5 MR. POOL: Well, the boat was registered when I
6 bought it to the previous owner in Oregon. I changed that
7 registration to my name in Oregon, which is -- in Oregon
8 that registration is good for two years.

9 JUDGE ALDRICH: Okay.

10 MR. POOL: So -- and then what I proceeded
11 immediately to do is Oregon requires state registration.
12 The State of California does not. And I registered the
13 boat federally with the U.S. Coast Guard. So I have a
14 U.S. Coast Guard number for the vessel. It's never been
15 registered in California. It's not necessary.

16 JUDGE ALDRICH: Okay. And then at some point was
17 it registered in Mexico?

18 MR. POOL: No. I have paperwork from Ensenada
19 when I entered the country of -- and then cleared customs
20 and vehicle, all the vessel legalities that are necessary.
21 All I've got is the paperwork for all of that when I
22 cleared into Mexico.

23 JUDGE ALDRICH: Okay. And I just kind of wanted
24 to get the timeline down so as far as the stops in
25 California.

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MR. POOL: Okay.

JUDGE ALDRICH: So Bodega Bay, when do you leave?

MR. POOL: Here let me -- so I departed Portland on 30 September. Bodega -- I entered Bodega Harbor on October 8th shortly after midnight. I departed Bodega Harbor on November 15.

JUDGE ALDRICH: November 15th?

MR. POOL: Yeah.

JUDGE ALDRICH: Okay.

MR. POOL: Then I sailed for 24 hours entering Monterey. I departed Monterey on the --

JUDGE ALDRICH: So -- hold up. So you arrive in Monterey on the 16th?

MR. POOL: Yes.

JUDGE ALDRICH: Okay. And then you depart Monterey when?

MR. POOL: On the 29th of November.

JUDGE ALDRICH: Okay. And you proceed to Morro Bay; is that correct?

MR. POOL: Yeah. So I entered Morro on November 30.

JUDGE ALDRICH: So that was about a 24-hour trip as well?

MR. POOL: Yes.

JUDGE ALDRICH: Okay. And then from Morro Bay

1 you go to Santa Barbara?

2 MR. POOL: Santa Barbara, yeah.

3 JUDGE ALDRICH: Okay. And how long was that
4 trip?

5 MR. POOL: I departed Morro Bay on December 6th.
6 And, again, it's another 24, 28-hour trip. I entered
7 Santa Barbara on December 7.

8 JUDGE ALDRICH: Okay. And from Santa Barbara you
9 go to San Pedro?

10 MR. POOL: Yes. Yeah, departing Santa Barbara on
11 the 13th of December. I entered San Pedro on the 14th of
12 December.

13 JUDGE ALDRICH: Okay. And then after San Pedro?

14 MR. POOL: On January 1, I left with Eric Mai
15 from San Pedro and headed to Ensenada.

16 JUDGE ALDRICH: Mexico?

17 MR. POOL: Yeah.

18 JUDGE ALDRICH: Okay. All right. That's all the
19 questions that I had at the moment.

20 I'm going to turn it back to Judge Wong.

21 JUDGE WONG: This is Judge Wong. Thank you.

22 I also have a few questions for Mr. Pool. So I
23 just wanted again go over the timeline a little bit. So
24 you purchased the Dublin Dragon in Oregon on January 14th,
25 2014; right?

1 MR. POOL: I want to make sure. January -- yeah.
2 That was -- I had started the purchase on -- in December
3 of 2013. It was completed and all the paperwork and, you
4 know, the legalities were completed in January of 2014.
5 You're right.

6 JUDGE WONG: This is Judge Wong. And I believe
7 you had testified that you had intended to keep it in
8 Oregon for a period of time; is that correct?

9 MR. POOL: Yeah. I needed -- I needed -- the
10 boat had been in Oregon for quite a few years on the
11 Columbia, and it wasn't ready for open ocean water
12 sailing, which is far more rigorous. So my intent was to
13 keep it there as long as necessary to make it safe to go
14 south. I was hoping that I would be ready to go south in
15 the summer sometime in June or July.

16 But if I wasn't able to complete the repairs, I
17 was going to leave it in Oregon for that winter. So
18 that -- what happened is I was able to complete the
19 repairs before the sort of magical October 1 deadline for
20 heading south, for transiting south in a boat.

21 JUDGE WONG: This is Wong. Did you -- I noticed
22 you made arrangements for your boat in Oregon. There's
23 documents indicating you had, I guess, rented a slip in
24 Oregon; is that correct?

25 MR. POOL: Yeah. On October -- on 1st of

1 October, I entered a -- it's called a tenancy agreement
2 with the marina to rent a slip for a month-to-month basis
3 to keep the boat there as long as possible.

4 JUDGE WONG: Okay. So it was on a month-to-month
5 basis?

6 MR. POOL: Yeah.

7 JUDGE WONG: Did you make any arrangements for
8 the boat ahead of time in Cabo or Ensenada at the time you
9 purchased the boat in January?

10 MR. POOL: No, it's not necessary. I had been in
11 contact with people in San Jose, but I'd also been in
12 contact with the marina in Ensenada, and they had plenty
13 of availability. They said just let us know you're coming
14 down or when you think you're going to make it. There was
15 no contract made with any of them. It just wasn't
16 necessary.

17 JUDGE WONG: Okay. So there's no documentary
18 evidence showing a contract for a long-term rental of a
19 slip in either Ensenada or Cabo?

20 MR. POOL: No. Because even in Cabo I hadn't
21 decided which of the marinas to stay at, and they all had
22 availability along with there are some excellent
23 anchorage. So --

24 JUDGE WONG: So there are also no -- like, you
25 didn't request any quotes for saying like, oh, I'm going

1 to be in Cabo for X amount of months or years or anything
2 like that?

3 MR. POOL: Yeah. No. I did request those by
4 email. I don't think I saved any. They just said, here's
5 what your monthly fee will be. Here's some other
6 incidentals such as, you know, necessary insurance. And
7 they gave me a number, but there were no -- there were no
8 formal quotes. It's very much Mexico that way and --

9 JUDGE WONG: Okay. Let me just see if I have any
10 other questions. Oh, okay. This is my last question, I
11 believe. And then I believe Judge Aldrich has another
12 question for you. In the briefs you had argued that you
13 intended to keep the vessel moored in Mexico after your
14 three-month summer vacation there based on a financial
15 analysis that it would be cheaper. And so do you have any
16 documentary evidence of this financial analysis,
17 spreadsheets, again, quotes, contracts, things like that?

18 MR. POOL: No. It's -- it's just that at that
19 point I was looking at a couple of the slips if they were
20 available in Southern California. Virtually, nothing was
21 available. Most people start either in Wilmington or in
22 the Long Beach harbor that's closest to the commercial
23 harbor. They -- I was running in the 6 to \$700 range
24 there in Newport Beach. If I could have found a private
25 slip probably, it probably would have been in the \$3,500 a

1 month range.

2 So it made anything in Newport Beach
3 economically. I mean, I couldn't afford that. And it's
4 very, very difficult to get slips on sort of an immediate
5 basis like that. In fact, if I probably went to the
6 downtown harbor in Long Beach right, I'm going to guess
7 I'd be sitting at 3 or 4 months before I could even get
8 in.

9 So they keep a fair amount of transient slips.
10 But for instance, in Santa Barbara you can only stay in
11 the harbor for two weeks. Your rates will triple after
12 that. And that's so that they don't get people like sort
13 of permanently sitting on a transient slip. Slips are
14 very difficult to get except for a few available transient
15 slips, which all the harbors maintain.

16 JUDGE WONG: This is Judge Wong. But it also
17 sounds like you considered -- after you purchased the
18 boat, you considered bringing it to California? Because
19 it sounds like you -- when you make a financial analysis
20 comparing cost and what not with Mexico versus Southern
21 California, it sounds like you are considering that as an
22 option.

23 MR. POOL: Well, no. The consideration on that
24 is just to figure out -- because once I took it down -- I
25 had looked at the numbers. The reason for the financial

1 analysis was because -- that's why I decided to go to
2 Mexico, which is where I wanted to go anyway because it's
3 far, far cheaper. Plus, I intended to sail on the Sea of
4 Cortez and San Jose for a couple years on vacations, you
5 know, go down every three months or so.

6 But I had -- you know, I'm probably mixing up
7 some things because when I looked at getting a boat
8 initially before I got the Newport 41 in Newport, I had
9 done a lot of these same numbers. And I realize I could
10 not keep a boat in Southern California, particularly
11 Newport Harbor unless I had a mooring. But -- so I had a
12 mooring, and I had a very inexpensive boat on it, but I
13 didn't have any other options. So there's a lot of just
14 quick analysis done, nothing very formal. But --

15 JUDGE WONG: This is Judge Wong. Thank you,
16 Mr. Pool. That's all the questions I had at this time.

17 Judge Aldrich -- yes, Judge Aldrich, you had a
18 question?

19 JUDGE ALDRICH: Hi. This is Judge Aldrich.
20 Mr. Pool, so my understanding is that at each of those
21 stops certain repairs were made in California?

22 MR. POOL: Not necessarily. The stops were
23 either because I had limited crew or no crew, and it
24 wasn't safe for me to continue on. So a lot of the times
25 it was just to stop. I would rent a car, head back to my

1 home in Aliso Viejo and work for the week or the two until
2 I could get back up there and sail down.

3 JUDGE ALDRICH: Okay.

4 MR. POOL: Most of those, you know, there were
5 some repairs made in Monterey, but they were really just
6 mine, you know making sure -- it's -- it's normal
7 maintenance for offshore sailing like check batteries,
8 check fuel pumps, check emergency systems. You know, I --
9 wouldn't -- once I got out of Bodega, you know, there were
10 repairs or like sort of refits, but it's just typical
11 prudent yacht maintenance.

12 JUDGE ALDRICH: Okay. So repairs in Bodega and
13 repairs in Monterey?

14 MR. POOL: Yeah. Like Monterey was just sort of
15 like fine tuning tightening, you know, tightening down the
16 batteries, refill with water, and your lines in the
17 rigging. It's -- it's normal maintenance on a sailing
18 vessel if you're sailing offshore.

19 JUDGE ALDRICH: Okay. And the maintenance or
20 repairs, those were all done by you and not some other
21 like third party, like a licensed repairman?

22 MR. POOL: No. They were all done by me. And
23 that's because at the time I held a U.S. Coast Guard
24 Master Vessel, which is commonly known as a Coast Guard
25 Captain's license. It's a federally issued license, and I

1 was working commercially for the Sundiver Yachts Charter
2 out of Long Beach as a dive boat captain on, you know,
3 some trips even up to seven nights offshore.

4 So as a U.S. Coast Guard Master, I'm required to
5 know every aspect about a vessel, including its repair.
6 So I can either do the repair myself or hire someone who
7 is appropriate to do so. In this case, I felt I was far
8 better to make these repairs on my own vessel, besides the
9 fact it was a lot less expensive. But by doing it myself,
10 I knew it was done correctly.

11 When I replaced the chain plates, that was close
12 to a \$20,000 estimate to have those done up in Portland.
13 I did them myself, along with another boat's craftsman up
14 in Portland. And I'm -- most of my undergrad is in
15 mechanical engineering. I've worked for 10 -- for a
16 decade. As a commercial captain, I'm very familiar with
17 boat repair and vessels.

18 JUDGE ALDRICH: Thank you, Mr. Pool. That
19 concludes my questions.

20 Back to Judge Wong. Thank you.

21 JUDGE WONG: This is Judge Wong. Thank you,
22 Mr. Pool, and thank you, Mr. Meza. You will have time at
23 the end for a closing statement and rebuttal.

24 Now we're going to turn to CDTFA for their
25 presentation. You have 20 minutes. Thank you.

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MS. DANIELS: Thank you.

PRESENTATION

MS. DANIELS: Good morning.

As you are aware, we are here today to determine whether Appellant is liable for use tax with respect to his purchase of a 1980 36.7-foot Tayana yacht named the "Dublin Dragon."

When a vessel is purchased from a person not required to hold a seller's permit for the sale of vessels, the applicable tax, if any, is use tax. That's Revenue & Tax Code Section 6283. We'll hereinafter refer to that as the code, and we're looking at subdivision(a). Also, California Code of Regulations Title 18, hereinafter referred to as regulation Section 16110 subdivision (b) (1) (c).

Use tax applies to the storage, use, or other consumption in the state of tangible personal property purchased for use and used in California measured by the sales price of the property, And that's Code Section 6201 and Regulation Section 1620 subdivision(b) (1). The taxes owed by the person using, storing, or otherwise consuming the property in California, and again, that's Code Section 6206 subdivision(a).

So under Regulation 1620(b) (5) (a), when a vessel is purchased outside of California is first functionally

1 used outside of California and is brought into California
2 within 12 months from the date of its purchase, it is
3 rebuttably presumed that the vessel was acquired for
4 storage, use, or other consumption in the state, and is
5 subject to use tax if the vessel is purchased by a
6 California resident.

7 You can also see Code Section 6246. Under
8 Regulation 1620(b)(5)(a), this presumption may be rebutted
9 by documentary evidence that the vessel was purchased for
10 use outside the State. Moreover, under subsection (d), a
11 vessel that's brought into the state exclusively for the
12 purpose of repair, retrofit, or modification shall not be
13 deemed to be acquired for storage use or other consumption
14 in the state if the repair, retrofit, or modification is,
15 in the case of a vessel, performed by a repair facility
16 that holds an appropriate permit issued by the Board, and
17 is licensed to do business by the city and/or county in
18 which it is located, if that city and/or county so
19 requires.

20 So here the following facts are not in dispute.
21 Appellant is a California resident, and he did purchase
22 the vessel in Oregon on January 14th, 2014, for the
23 purchase price of \$65,000. As Appellant testified, he
24 purchased the vessel solely for personal, i.e.,
25 noncommercial use. And he first functionally used the

1 vessel outside of California, and then brought the vessel
2 into California on October 8, 2014, which is within 12
3 months from the date of the purchase.

4 So because Appellant is a California resident, he
5 is presumed to have purchased the vessel for use within
6 the State. Thus, under Regulation 1620, Appellant has the
7 burden of rebutting this presumption by providing
8 documentary evidence showing that the vessel was purchased
9 for use outside of the State during the first 12 months of
10 ownership. Appellant has failed to provide this evidence.

11 Appellant has provided registration of the vessel
12 in Oregon, but he has stated that he did not intend to
13 keep the vessel in Oregon. Thus, this evidence does not
14 rebut the presumption. In fact, the evidence indicates
15 that petitioner intended to moor the vessel at his slip in
16 Newport Beach when it became possible for him to do so.
17 And Appellant has admitted that the unavailability of his
18 slip in Newport Beach at the time he purchased the vessel,
19 along with the relative inexpensiveness of registering the
20 vessel in Oregon is why the vessel remained in Oregon
21 while undergoing its initial repairs and maintenance in
22 preparation for his Mexico voyage.

23 So based on the foregoing, Appellant has failed
24 to meet his burden of producing documentary evidence to
25 rebut the presumption that he purchased the vessel for use

1 in the State. Appellant has also failed to meet the
2 repair retrofit or modification of vessels exception under
3 Regulation 1620(b)(5)(d). As provided, a vessel can be
4 brought into the State and not deemed as used, if it is
5 brought into the State for purposes of being repaired by a
6 permitted and licensed repair facility.

7 Appellant brought the vessel into California
8 numerous times during his voyage to Mexico asserting that
9 repairs needed to be made. In fact, between October 8th,
10 2014, and January 1st, 2015, the vessel was docked in
11 Bodega Bay, Monterey, Morro Bay, Santa Barbara, and
12 San Pedro, California. Based on the decision dates that
13 were provided, the vessel was docked at Bodega Bay from
14 October 8, 2014, through November 18th, 2014, then docked
15 in Monterey bay from November 19th to 29th, then sailed to
16 Morro Bay where it was docked from December 7th through
17 13th, 2014. Afterwards, the vessel was docked at Santa
18 Barbara from December 13th to 20th, and was finally docked
19 in San Pedro from December 21st, 2014, until January 1st,
20 2015, when Appellant departed for Mexico.

21 Based on the Appellant's allegations, the vessel
22 was docked in California for approximately three months
23 due to repairs and also his need to rest. However,
24 Appellant has failed to provide any receipts or invoices
25 for repairs made at a licensed repair facility during this

1 time. Appellant alleges that he purchased supplies and
2 made all the necessary repairs himself, but these
3 self-made repairs do not suffice to meet the requirements
4 under subsection(d).

5 Moreover, there's evidence that the vessel's
6 presence within the State was not exclusively due to
7 repairs that needed to be made. For example, Appellant
8 testified today that he needed to dock in order to rest,
9 which we completely understand and also, that it was
10 docked in Monterey Bay and Morro Bay while he returned
11 home to work throughout his voyage.

12 So based on the foregoing, Appellant has failed
13 to provide any evidence to rebut the presumption that as a
14 California resident he purchased the vessel for use in
15 California. Appellant's entire case rests on his
16 allegations that he did not have any intention to bring it
17 into the State, but his allegations without documentary
18 evidence do not suffice to usher him with an exemption to
19 California sales and use tax laws.

20 Additionally, Appellant consistently used the
21 vessel within the State of California within the 12 months
22 of its purchase. So although we are very sympathetic to
23 Appellant's circumstances and the storm he faced, he has
24 failed to meet his burden, and his appeal should be
25 denied.

1 Thank you.

2 JUDGE WONG: Thank you, Ms. Daniels. This is
3 Judge Wong.

4 As CDTFA was providing argument and not witness
5 testimony, they are not subject to cross-examination. So
6 I will now just turn to my Panel see if they have any
7 questions regarding CDTFA's presentation, starting with
8 Judge Le.

9 JUDGE LE: This is Judge Le. No questions.
10 Thank you.

11 JUDGE WONG: This is Judge Wong. Thank you.
12 Judge Aldrich, do you have any questions for
13 CDTFA?

14 JUDGE ALDRICH: This is Judge Aldrich. No
15 questions. Thank you.

16 JUDGE WONG: This is Judge Wong. I also do not
17 have any questions for CDTFA.

18 So I will now turn it back over to Mr. Meza for
19 your rebuttal and any closing remarks, closing
20 presentation. You have -- let's see. I think you
21 budgeted five minutes, but you can take a little bit
22 longer than that since I don't think you used all your
23 time at the beginning. Mr. Meza?

24 MR. MEZA: Yes, Your Honor.

25 ///

1 aficionado that does this on his free time.

2 No. This is an individual who is licensed -- who
3 is licensed by the proper governing agencies to do what he
4 does. He not only does this for a hobby, he does this for
5 a living. He needs to know how to do these things because
6 he's in charge of their lives when he is captaining other
7 boats, not just his personal vessel. When he purchased
8 the Dublin Dragon, it was never his intent to have it in
9 California outright. That's it.

10 Sure, there were considerations maybe
11 potentially, but from his previous knowledge of what he
12 knew about how much it would cost to moor in Mexico versus
13 California, the scarcity in California, that all
14 influenced his decision at the beginning to keep out of
15 California. Maybe in the future after 12 months,
16 possibly, but at that point in time in 2014 when he
17 purchased that vessel, it was just not possible for him to
18 do so.

19 Did he have a month-to-month contract? Yes. He
20 stated earlier that he had a month-to-month contract in
21 Oregon just for the possibility that he would miss that
22 window of October 1st. Because after that it would just
23 have been completely unreasonable for him to try to sail
24 out in mid -- in the plain of winter where weather
25 conditions are far worse.

1 So Mr. Pool did everything possible to get it out
2 of Oregon to go to Mexico, not to California. But he kept
3 that plan B to stay in Oregon but not California. He
4 stated earlier that he would potentially have done the
5 month-to-month contract just because he had the
6 possibility that he would be forced to keep it in Oregon
7 and not sail out during the winter. But he really wanted
8 to go to Mexico.

9 He wanted to sail in Mexico the Sea of Cortez.
10 He had other future plans for the near future of sailing
11 that boat down in Mexico and the neighboring shores, the
12 water, the seas down there. That was his intention. It
13 was not his intention to sail in California and keep it in
14 California. It was his intention to sail around Mexico.
15 The possibility of him not being in Mexico, his plan B,
16 his fall back was Oregon.

17 I have no further statements, Your Honor. Thank
18 you.

19 JUDGE WONG: This is Judge Wong. Thank you.

20 I will now turn to my Panel for any final
21 questions they might have for CDTFA or Appellant,
22 beginning with Judge Le.

23 JUDGE LE: No additional questions. This is
24 Judge Le. Thank you so much, everybody.

25 JUDGE WONG: This is Judge Wong. Judge Aldrich,

1 did you have any final questions?

2 JUDGE ALDRICH: This is Judge Aldrich. No final
3 questions for me. Thank you.

4 JUDGE WONG: This is Judge Wong. I did have one
5 final question for Mr. Pool. Did you -- at this time, did
6 you work for -- what was your job? Did you work for,
7 like, a boat repair facility or --

8 MR. POOL: No. I worked for Sundiver charters
9 out of Long Beach. It's owned by a guy named Ray Earl.
10 He owns three boats. Well, he's got more than that, but
11 there are three of them that are used for dive boat
12 charters, for both overnight charters to Catalina and the
13 Channel Islands, and for day charters out of Long Beach to
14 Catalina Island.

15 So he's a licensed business. He's been operating
16 for 20-some years. And I would, in an official capacity
17 as captain of the vessel, as master of the vessel, I
18 would -- he would -- I was hired sometimes on both
19 Saturday and Sunday but usually two to four times a month
20 as a dive boat captain for scuba diving charters to the
21 islands.

22 JUDGE WONG: Thank you, Mr. Pool. I didn't have
23 any further questions. Thank you for your testimony
24 today.

25 And thank you to Appellant and CDTFA for your

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presentations.

 If there's no final questions, this will conclude the hearing. The record is closed, and the case is submitted today.

 The Judges will meet and decide the case based on the exhibits presented and admitted as evidence, as well as Mr. Pool's testimony. We'll send both parties our written decision no later than 100 days from today. This oral hearing is now adjourned, and we will go off the record.

 Thank you.

 (Proceedings adjourned at 10:29 a.m.)

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HEARING REPORTER'S CERTIFICATE

I, Ernalyne M. Alonzo, Hearing Reporter in and for the State of California, do hereby certify:

That the foregoing transcript of proceedings was taken before me at the time and place set forth, that the testimony and proceedings were reported stenographically by me and later transcribed by computer-aided transcription under my direction and supervision, that the foregoing is a true record of the testimony and proceedings taken at that time.

I further certify that I am in no way interested in the outcome of said action.

I have hereunto subscribed my name this 28th day of February, 2023.

ERNALYN M. ALONZO
HEARING REPORTER